

_____ BILL NO. _____

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE DOLLAR AMOUNT OF THE CIVIL JURISDICTION OF A JUSTICE'S COURT, INCLUDING ITS SMALL CLAIMS DIVISION; AND AMENDING SECTIONS 3-10-301, 3-10-1004, 25-35-502, 25-35-503, 25-35-606, AND 75-7-123, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 3-10-301, MCA, is amended to read:

"3-10-301. Civil jurisdiction. (1) Except as provided in 3-11-103 and in subsection (2) of this section, the justices' courts have jurisdiction:

(a) in actions arising on contract for the recovery of money only if the sum claimed does not exceed ~~\$7,000~~ \$15,000, exclusive of court costs;

(b) in actions for damages not exceeding ~~\$7,000~~ \$15,000, exclusive of court costs, for taking, detaining, or injuring personal property or for injury to real property when no issue is raised by the verified answer of the defendant involving the title to or possession of the real property;

(c) in actions for damages not exceeding ~~\$7,000~~ \$15,000, exclusive of court costs, for injury to the person, except that, in actions for false imprisonment, libel, slander, criminal conversation, seduction, malicious prosecution, determination of paternity, and abduction, the justice of the peace does not have jurisdiction;

(d) in actions to recover the possession of personal property if the value of the property does not exceed ~~\$7,000~~ \$15,000;

(e) in actions for a fine, penalty, or forfeiture not exceeding ~~\$7,000~~ \$15,000 imposed by a statute or an ordinance of an incorporated city or town when no issue is raised by the answer involving the legality of any tax, impost, assessment, toll, or municipal fine;

(f) in actions for a fine, penalty, or forfeiture not exceeding ~~\$7,000~~ \$15,000 imposed by a statute or assessed by an order of a district for violation of Title 75, chapter 7, part 1;

(g) in actions upon bonds or undertakings conditioned for the payment of money when the sum claimed does not exceed ~~\$7,000~~ \$15,000, though the penalty may exceed that sum;

(h) to take and enter judgment for the recovery of money on the confession of a defendant when the

1 amount confessed does not exceed ~~\$7,000~~ \$15,000, exclusive of court costs;

2 (i) to issue temporary restraining orders, as provided in 40-4-121, and orders of protection, as provided
3 in Title 40, chapter 15;

4 (j) to issue orders to restore streams under Title 75, chapter 7, part 1, or to require payment of the actual
5 cost for restoration of a stream if the restoration does not exceed ~~\$7,000~~ \$15,000.

6 (2) Justices' courts do not have jurisdiction in civil actions that might result in a judgment against the
7 state for the payment of money."

8
9 **Section 2.** Section 3-10-1004, MCA, is amended to read:

10 **"3-10-1004. Jurisdiction -- removal from district court.** (1) The small claims court has jurisdiction
11 over all actions for the recovery of money or specific personal property when the amount claimed does not
12 exceed ~~\$3,000~~ \$10,000, exclusive of costs, and the defendant can be served within the county where the action
13 is commenced.

14 (2) A district court judge may require any action filed in district court to be removed to the small claims
15 court if the amount in controversy does not exceed ~~\$3,000~~ \$10,000. The small claims court shall hear ~~any~~ the
16 action ~~so~~ removed from the district court."

17
18 **Section 3.** Section 25-35-502, MCA, is amended to read:

19 **"25-35-502. Jurisdiction.** (1) The small claims court has jurisdiction over all actions for the recovery
20 of money or specific personal property when the amount claimed does not exceed ~~\$3,000~~ \$10,000, exclusive
21 of costs, and the defendant can be served within the county where the action is commenced.

22 (2) The small claims court has jurisdiction over an interpleader under 25-35-508 in which the amount
23 claimed does not exceed ~~\$3,000~~ \$10,000."

24
25 **Section 4.** Section 25-35-503, MCA, is amended to read:

26 **"25-35-503. Removal from district court.** A district court judge may require any action filed in district
27 court to be removed to the small claims court if the amount in controversy does not exceed ~~\$3,000~~ \$10,000. The
28 small claims court shall hear ~~any~~ the action ~~so~~ removed from the district court."

29
30 **Section 5.** Section 25-35-606, MCA, is amended to read:

"25-35-606. Defendant's counterclaim. (1) The defendant may assert a counterclaim against the plaintiff arising out of the same transaction or occurrence that is the subject matter of the plaintiff's claim by appearing before the justice of the peace and executing a sworn small claims counterclaim in substantially the same form as set forth in subsection (3). The defendant shall cause the counterclaim to be served on the plaintiff not less than 72 hours before the date set for the hearing. Service must be made in the same manner in which service of the order of court/notice to defendant is made on the defendant. A defendant may not assert as a counterclaim any claim not arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim.

(2) A counterclaim or setoff may not exceed ~~\$2,500~~ \$10,000. If a counterclaim or setoff is asserted in excess of ~~\$2,500~~ \$10,000, the jurisdiction of the small claims court over the plaintiff's claim is not defeated, but the court shall limit its determination of the counterclaim or setoff to the question of whether the plaintiff's claim is discharged, leaving the defendant to prosecute the balance of the defendant's claim in an appropriate justice or district court action.

(3) The counterclaim must be made in substantially the following form:

IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S COURT OF

..... COUNTY, MONTANA

BEFORE, JUSTICE OF THE PEACE

.....

Plaintiff

vs.

Counterclaim

.....

Case No.

.....

Defendant(s)

.....

Comes now the defendant, being first duly sworn, and alleges that the defendant is entitled to counterclaim against the plaintiff in the plaintiff's pending action in the sum of \$....., for

.....

.....

which sum is now due, together with defendant's costs expended in this action.

Dated this day of, 20...

1
2 Defendant
3
4 Defendant's address
5 Subscribed and sworn to before me this day of....., 20...
6
7 Justice of the peace
8 By:
9 Clerk, small claims division"
10

11 **Section 6.** Section 75-7-123, MCA, is amended to read:

12 **"75-7-123. Penalties -- restoration.** (1) A person who initiates a project without written consent of the
13 supervisors, performs activities outside the scope of written consent of the supervisors, violates emergency
14 procedures provided for in 75-7-113, or violates 75-7-106 is:

15 (a) guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$500; or

16 (b) subject to a civil penalty not to exceed \$500 for each day that person continues to be in violation.

17 (2) Each day of a continuing violation constitutes a separate violation. The maximum civil penalty is the
18 jurisdictional amount for purposes of 3-10-301. A conservation district may work with a person who is subject
19 to a civil penalty to resolve the amount of the penalty prior to initiating an enforcement action in justice's court
20 to collect a civil penalty.

21 (3) In addition to a fine or a civil penalty under subsection (1), the person:

22 (a) shall restore, at the discretion of the court, the damaged stream, as recommended by the
23 supervisors, to as near its prior condition as possible; or

24 (b) is civilly liable for the amount necessary to restore the stream. The amount of the liability may be
25 collected in an action instituted pursuant to 3-10-301 if the amount of liability does not exceed ~~\$7,000~~ \$15,000.

26 If the amount of liability for restoration exceeds ~~\$7,000~~ \$15,000, then the action must be brought in district court.

27 (4) Money recovered by a conservation district or a county attorney, whether as a fine or a civil penalty,
28 must be deposited in the depository of district funds provided for in 76-15-523, unless, upon order of a justice's
29 court, the money is directed to be deposited pursuant to 3-10-601."

30 - END -